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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/941,424      | 08/28/2001  | Curtis E. Jutzi      | 42390P11870         | 7220             |

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EXAMINER

AU, GARY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2611

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/941,424             | JUTZI, CURTIS E.    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Gary Au                | 2611                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>June 06, 2003, 1/2/02</u>   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,758,257 Herz et al. (Herz).

As to claim 1, Herz teaches a method for supporting a broadcast service, comprising: for each of a plurality of customers of the broadcast service, determining, by executing server software (it is noted that the server software is within system controller 506 or 606 to be executed for scheduling the presentation of the program materials according to the data stored on the data collection memory 508 – figure 5 and 6, col. 42 lines 1-11), predicted content (video programming from virtual channel, col. 45 lines 34 – 55) that the customer's client software (within set top terminal - figure 9, col. 45 lines 9-33) is expected to acquire from the service on behalf of the customer, based on (1) billing information (updated customer profiles) for the customer received from the customer's client software and that describes previously broadcast content acquired by the client software on behalf of the customer (the updated customer profile containing information about the viewing history is sent from the set top multimedia terminals to the head end 502 – figure 5, col. 25 lines 7-15, 45-48 , col. 29 lines 52-67, col. 41 line 57 -

Art Unit: 2611

col. 42 line 11), and (2) a description of available content (content profiles, col. 11 lines 45-58) that will be available for broadcast by the service and that can be acquired by the plurality of customers' client software (the highest matched programs are selected for presentation as virtual channel based on the content profile and customer profile, col. 25 lines 16-30, col. 24 line 56 – col. 25 line 6); and deriving a broadcast schedule (broadcast a list of preferred channel selections or virtual channel, i.e. program guide, col. 45 lines 14-17, 35-38) for the service based on the predicted content for the plurality of customers, wherein the schedule includes a description of some of the available content.

As to claim 2, Herz teaches that the available content includes digital movies that can be watched by the customers (col. 24 line 56 – col. 25 line 6).

As to claim 3, Herz teaches that the available content includes digital audio recordings that can be listened to by the customers (col. 49 lines 32-51).

As to claim 4, Herz teaches that the billing information is taken from one or more billing logs received from the customer's client software (the customer profile is sent to the head end, col. 41 line 57 – col. 42 line 11) and that identify the customer (by customer identifier interface 918 - figure 9, col. 45 line 56 – col. 46 line 18), the previously broadcast movies acquired by the client software on behalf of the customer (col. 25 lines 45-48, col. 29 lines 52-66, col. 41 lines 4-18), and the fraction of each

Art Unit: 2611

acquired movie that was actually played back as determined by the client software (the set top multimedia terminal maintains a record of the watched channel for a period of time, col. 25 lines 31-44).

As to claim 5, Herz teaches that the predicted content for each customer is determined by performing an algorithm in the server software (the agreement matrix) that computes the relevance of one or more categories in which a movie can be placed to what the client software can acquire from the service on behalf of the customer, based on a description of the previously broadcast content identified in the billing information and that includes the one or more categories for each previously broadcast movie (the agreement matrix is created by comparing the characterization of the customer profile and content profile under categories such as film genres, directors, and MPAA rating, col. 11 lines 45-58, col. 25 lines 16-30).

As to claim 6, Herz teaches that the predicted content for each customer is determined by further performing an algorithm in the server software that selects from among the available content a predicted movie whose one or more categories match the most relevant categories that were computed on behalf of the customer (the programs with the highest matching value with the customer profile and content profile is selected for presentation as virtual channels, col. 25 lines 16-30).

As to claim 7, Herz teaches a machine-readable medium (Within 506 – figure 5, col. 42 lines 1-11) having a plurality of instructions stored therein which when executed by a processor (system controller 506 or 606 – figure 5 and 6, col. 42 lines 1-11) cause an electronic system to support a broadcast service by determining, for each of a plurality of customers of the broadcast service, predicted content (video programming from virtual channel, col. 45 lines 34 – 55) that the customer's client software (within set top terminal - figure 9, col. 45 lines 9-33) is expected to acquire from the service on behalf of the customer, based on (1) billing information (updated customer profiles) for the customer received from the customer's client software and that describes previously broadcast content acquired by the client software on behalf of the customer (the updated customer profile containing information about the viewing history is sent from the set top multimedia terminals to the head end 502 – figure 5, col. 25 lines 7-15, 45-48 , col. 29 lines 52-67, col. 41 line 57 - col. 42 line 11), and (2) a description of available content (content profiles, col. 11 lines 45-58) that will be available for broadcast by the service and that can be acquired by the plurality of customers' client software (the highest matched programs are selected for presentation as virtual channel based on the content profile and customer profile, col. 25 lines 16-30, col. 24 line 56 – col. 25 line 6); and deriving a broadcast schedule (broadcast a list of preferred channel selections or virtual channel, i.e. program guide, col. 45 lines 14-17, 35-38) for the service based on the predicted content for the plurality of customers, wherein the schedule includes a description of some of the available content.

As to claim 8, see rejection of claim 2.

As to claim 9, see rejection of claim 3.

As to claim 10, see rejection of claim 4.

As to claim 11, see rejection of claim 5.

As to claim 12, see rejection of claim 6.

As to claim 13, Herz teaches a server (head end 502 – figure 5, col. 41 line 57 – col. 42 line 11) to determine, for each of a plurality of customers of the broadcast service, predicted content (video programming from virtual channel, col. 45 lines 34 – 55) that the customer's client software (within set top terminal - figure 9, col. 45 lines 9-33) is expected to acquire from the service on behalf of the customer, based on (1) billing information (updated customer profiles) for the customer received from the customer's client software and that describes previously broadcast content acquired by the client software on behalf of the customer (the updated customer profile containing information about the viewing history is sent from the set top multimedia terminals to the head end 502 – figure 5, col. 25 lines 7-15, 45-48 , col. 29 lines 52-67, col. 41 line 57 - col. 42 line 11), and (2) a description of available content (content profiles, col. 11 lines 45-58) that will be available for broadcast by the service and that can be acquired by the plurality of customers' client software (the highest matched programs are selected for

Art Unit: 2611

presentation as virtual channel based on the content profile and customer profile, col. 25 lines 16-30, col. 24 line 56 – col. 25 line 6); and deriving a broadcast schedule (broadcast a list of preferred channel selections or virtual channel, i.e. program guide, col. 45 lines 14-17, 35-38) for the service based on the predicted content for the plurality of customers, wherein the schedule includes a description of some of the available content.

As to claim 14, see rejection of claim 2 and 8.

As to claim 15, see rejection of claim 3 and 9.

As to claim 16, see rejection of claim 4 and 10.

As to claim 17, see rejection of claim 5 and 11.

As to claim 18, see rejection of claim 6 and 12.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,410,344 (Graves et al.) teaches a method and apparatus for selecting audiovisual programs for presentation to a viewer. US Patent No. 6,317,881



(Shah-Nazaroff et al.) teaches an improved method and apparatus to collect and provide viewer feedback to broadcasts.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Au whose telephone number is (571) 272-2822. The examiner can normally be reached on 8am-4pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GA



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